

COMMISSION AGENDA

Item No: 7B

Meeting: 11/18/21

DATE: November 3, 2021

TO: Port Commission

FROM: Eric D. Johnson, Executive Director

Sponsor: Jason Jordan, Director, Environmental and Planning Services

Project Manager: Sarah Weeks, Environmental Project Manager I

SUBJECT: Alexander Avenue Petroleum Tank Facilities Cleanup Action

A. ACTION REQUESTED

As referenced in Resolution No. 2021-08-PT, Exhibit A, Delegation of Authority Master Policy, Paragraph IV.B.(2), states project costs exceeding \$300,000 require approval from Port Commission.

1. Request authorization to enter into grant agreements with the Washington State Department of Ecology for \$2,421,000 for Alexander Petroleum Tank Facilities Cleanup Action, Master Identification No. 094217 and 2017-59.
2. Request project authorization in the amount \$100,000 for a total authorized amount of \$2,348,000 for work associated with the Alexander Avenue Petroleum Tank Facilities Cleanup Action, Master Identification No. 094217 and 101312.01.

B. SYNOPSIS

The Port applied for and received an additional \$2,421,000 in Ecology Oversight Remedial Action Grant (RAG) funding. \$1,271,000 in funding was awarded from the 2019-2021 biennium and \$1,150,000 was awarded from the 2021-2023 biennium. Grant funds must be matched by the Port at 100%. We previously received a \$150,000 award from the 2017-2019 biennium, bringing total RAG funding for this project to \$2,571,000. The selected remedy is estimated to cost between \$3M and \$7M, bringing total project costs to between \$5M and \$9M. Project costs are also recoverable from Potential Liable Parties (PLPs) who operated the site prior to Port ownership.

An additional \$100,000 is required to respond to Ecology comments draft Cleanup Action Plan, the final deliverable required by the Agreed Order, and to negotiate a consent decree for remedy implementation. Project budget remaining on the current authorization is \$56,385, however most of these funds are allocated to the Cost Recovery (MID 101312.01), and funds allocated to the investigation (MID 094217) are exhausted due to prolonged negotiations with Ecology during the Feasibility Study. The additional time was worthwhile, as the Port and Ecology reached agreement on a remedy that satisfies Ecology and avoids spending project funds on elements that would not improve remedy effectiveness.

C. BACKGROUND

The Alexander Avenue former petroleum tank facilities (the Site) occupied two former bulk petroleum storage and distribution facilities that were in operation from the 1930s through the 1980s. The Port owns the property to the south (formerly 721 Alexander Avenue), and Mariana Properties, Inc. (a subsidiary of Occidental Chemical Corporation) owns the property to the north (formerly 709 Alexander Avenue). The Port property is currently leased to Puget Sound Energy for the operation of a Liquefied Natural Gas facility.

On July 10, 2013, Commission authorized the Port to enter Agreed Order DE 9835 (AO) with Ecology and Mariana for investigation and cleanup planning at the Alexander Avenue former tank facilities site. Under the AO, the Port and Mariana are obligated to take the following actions: complete a remedial investigation, feasibility study, and draft cleanup action plan. Around the same time the Port and Mariana entered into a cooperative agreement for the term of the AO to split consultant and Ecology oversight costs 60/40 (Port/Mariana). To date Mariana has reimbursed the Port \$533,177.

On July 1, 2021, the Port and Mariana submitted the final AO obligation, the draft Cleanup Action Plan, for Ecology's review. When Port staff were last at Commission in December 2018, the Remedial Investigation Report had been approved¹ and the Port had submitted foundation technical memos² to Ecology in preparation for kicking off the feasibility study, we anticipated that the feasibility study and the draft cleanup action plan would be complete by fourth quarter of 2019. It has taken two additional years for the parties to agree on a remedy that satisfies Ecology and prevents spending on cleanup elements that would not improve remedy effectiveness resulting in an estimated project savings of \$1,400,000 during remedy implementation. The first draft Feasibility Study was submitted to Ecology on May 21, 2019, and a final draft was approved on March 5, 2021. The draft Cleanup Action Plan was submitted to Ecology on July 1, 2021, the Port has received preliminary feedback and is waiting on additional comments from the Attorney General's office.

Remaining tasks prior to remedy implementation are to respond to Ecology's comments on the draft Cleanup Action Plan and negotiate a consent decree for cleanup implementation with Ecology. Port staff is requesting a consent decree versus an agreed order because a consent decree provides performing PLPs (the Port) three incentives to cleanup a site that an agreed order does not; a covenant not to sue, impartial dispute resolutions, and contribution protection (RCW 70.105D.040(4)). Contribution protection is the most important of these incentives, contribution protection allows the performing PLP to bring a cost recovery action against the polluting PLPs without having to fend off their counterclaims. Moreover, if work is conducted consistent with a consent decree, cost incurred by the performing PLP is assumed reasonable and consistent with MTCA as well as CERCLA. Such presumptions help bar challenges by polluting PLPs that costs incurred were unreasonable or otherwise not warranted.

¹ Remedial Investigation Report approved by Ecology on December 30, 2016.

² Natural Attenuation and Restoration Timeframe Evaluation submitted on May 16, 2017 and a Feasibility Study Technology Screening Report submitted on October 1, 2018.

D. PROJECT DETAILS

Scope of Project:

The basic terms of the Agreed Order obligated the Port and Mariana to:

- Develop a Screening Level Technical Memorandum [complete].
- Conduct a remedial investigation (RI) that fills the identified data gaps and documents current environmental conditions. This effort includes developing multiple documents, including a pre-fieldwork sampling and analysis plan, quality assurance/quality control plan, and a site-specific health and safety plan, as well as a RI Report at the conclusion of this task [complete].
- Prepare a feasibility study (FS) to evaluate the need for and scope of remedial action(s) required under MTCA [complete].
- Assist Ecology in preparing a draft Cleanup Action Plan (DCAP) that will formally describe proposed remedial actions identified to be necessary through the RI/FS process [underway].
- Reimburse Ecology for their oversight costs.

Scope of Work for This Request:

- Respond to Ecology comments on the draft Cleanup Action Plan.
- Negotiate a consent decree for cleanup implementation.
- Reimburse Ecology for their oversight costs.
- Cover Port staff costs.
- Cover Port legal costs.

Schedule

| | |
|--------------------------------------|------------------|
| Draft Cleanup Action Plan – complete | 1st Quarter 2022 |
| Draft Consent Decree | 1st Quarter 2022 |

E. FINANCIAL SUMMARY

Estimated Cost of Project

The total request today is \$100,000. The total estimated project cost is \$2,348,000, which includes consulting, staff, legal, and Ecology oversight costs. If the cost of this estimate is anticipated to exceed the authorized amount, additional Commission authorization will be requested.

This project cost estimate does not include cleanup construction costs or all anticipated cost recovery costs, cleanup construction and long-term monitoring costs are estimated at \$4,479,000.

Cost Details

To date, Mariana has reimbursed the Port \$533,177 per the terms the cooperative agreement. Subtracting the reimbursements from Mariana and the \$150,000 RAG from the 2017-2019 biennium, the Port has a net outlay of \$1,506,521. Roughly 50% of those costs are eligible for

reimbursement from the 2019-2021 and 2021-2023 biennium RAGs. As soon as the 2019-2021 grant agreement is finalized, the Port will submit a request for reimbursement for approximately \$670,000, reducing the Port's net outlay to \$836,521. Future requests for reimbursement will be made as future costs are accrued. Project costs are also recoverable from PLPs who operated the site prior to Port ownership, ExxonMobil and U.S. Department of Defense.

Costs

| Alexander Ave Petroleum Tank | This Request | Total Previous Requests | Total Estimated Project Costs | Cost to Date | Remaining Cost |
|-------------------------------|------------------|-------------------------|-------------------------------|--------------------|------------------|
| Investigation & Cost Recovery | \$100,000 | \$2,248,000 | \$2,348,000 | \$2,189,698 | \$158,302 |
| TOTALS | \$100,000 | \$2,248,000 | \$2,348,000 | \$2,189,698 | \$158,302 |

Reimbursements

| Alexander Ave Petroleum Tank | Total Award | Reimbursements | Remaining Funds |
|----------------------------------|---|----------------------------------|---------------------|
| Mariana (Oxy) | 40% of consultant costs and ECY oversight | -\$533,177 | \$35,000 [estimate] |
| Grant TCPRA-2018-TacoPo-00031 | \$150,000 | -\$150,000 | \$0 |
| Grant TCPRA-1921-TACOPO-00009 | \$1,271,000 | -\$670,000 [anticipated Q4 2021] | \$601,000 |
| Grant TCPRA-2123-TACOPO-00044 | \$1,150,000 | \$0 | \$1,150,000 |
| TOTALS | \$2,571,000 | -\$1,353,177 | \$1,786,000 |

Total net cost to the Port to date = \$836,521 (Costs to Date – Reimbursements)

Source of Funds

The current Capital Investment Plan (CIP) allocates \$2,387,000 for the investigation and cost recovery projects, MID 094217 and 101312.01.

Financial Impact

Project costs will be expensed as incurred. Reimbursements from Mariana reduce the project costs when requested. Grant funding will be recorded as non-operating income at the time the reimbursement is requested.

F. ECONOMIC INVESTMENT/JOB CREATION

Temporary indirect part-time jobs will be created during implementation of the cleanup action. The work will occur under a future Commission authorization.

G. ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS

Alternative 1: Do Nothing. Does not comply with the Agreed Order required activities.

Alternative 2: This request: (a) Complies with the Agreed Order, (b) Strengthens the Port's cost recovery case by advocating for a consent decree vs. agreed order for cleanup implementation, and (c) Funds the project by accepting \$2,421,000 in Ecology Oversight Remedial Action Grant funding.

Alternative 2 is the recommended course.

H. ENVIRONMENTAL IMPACTS/REVIEW

Permitting: Not applicable.

Remediation: This authorization will support the Alexander Avenue former tank facilities remediation project.

Stormwater: Not applicable.

Air Quality: Not applicable.

I. PREVIOUS ACTIONS OR BRIEFINGS

Commission actions and costs prior to project authorization:

| Date | Action | Amount |
|------------------|--|--|
| December 3, 2007 | Contract – Executive Authorization for data review and interim action cost estimates. | \$100,000 |
| December 4, 2008 | Contract – Commission Authorization for further investigation and reporting. | \$336,000 ^(a) (actuals = \$53,000) |
| August 31, 2013 | Other project costs prior to AO project authorization (staff time, legal, misc.) – <u>No commission action</u> | \$155,000 |
| TOTAL | | \$308,000 |

(a) Of this amount, only \$53,000 was expended, the contract is expired.

Project authorization by Commission and subsequent actions:

| Date | Action | Amount |
|---------------|--|----------------------------|
| July 10, 2013 | Commission authorization to enter the AO with Ecology and Mariana and enter the cost sharing agreement with Mariana. | NA |
| July 10, 2013 | Commission authorization to complete the AO as a project. | \$626,000 ^(b) |
| May 27, 2014 | Commission project authorization increase to account for past cost and fund additional sampling require by Ecology. | \$1,021,000 ^(c) |

| | | |
|-------------------|--|--------------------|
| December 21, 2017 | Commission project authorization increase for procurement of a new environmental consultant and preliminary cost recovery budget. | \$151,000 |
| December 20, 2018 | Commission project authorization increase to begin cost recovery efforts and additional funding to complete AO commitments due to schedule delays. | \$450,000 |
| TOTAL | | \$2,248,000 |

(b) Authorization to complete the Agreed Order commitments, excluding prior costs and included potentially recoverable costs.

(c) Between the 2013 and 2014 Commission authorizations, Port management clarified the way cost reimbursements and past costs are accounted for: project authorizations are requested at the gross cost estimate, including prior cost, and excluding potentially recoverable costs. This change in accounting added \$508,000 to the project budget (\$307,000 added for past costs, and \$200,000 added to correct for prior inclusion of recoverable costs from Mariana). An additional project authorization (increase) of \$513,000 was also requested to pay for a significant amount of additional sampling Ecology required for the remedial investigation, bringing the total budget addendum to \$1,021,000.

J. ATTACHMENTS TO THIS REQUEST

- Computer slide presentation.

K. NEXT STEPS

- Execute grant agreements with Ecology.
- Complete AO obligations and consent decree negotiations with Ecology.
- Request authorization for the Executive Director to sign the consent decree for cleanup implementation and initial funding to begin remedial design.